

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 349 of 1991

with

LETTERS PATENT APPEAL NO. 516 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI  
and  
Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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DIGMAL SITARAM PATIL

Versus

COMMANDANT SRP GROUP  
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Appearance:

MR IS SUPEHIA for Appellant - Digmál Sitaram Patil  
M/S MG DOSHIT & CO for Respondent in LPA 349/91  
and for the appellant in LPA 516 of 93.

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CORAM : MR.JUSTICE R.K.ABICHANDANI  
and  
MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/09/2000

Both these appeals are directed against the decision of the learned Single Judge rendered on 20th June 1991 and 9.10.1991, by which the learned Single Judge set aside the order of dismissal of the delinquent employee and remanded the matter to the Disciplinary Authority with a direction to pass a fresh order on the basis of the observations made in the judgement and in accordance with law after hearing the delinquent and giving him due opportunity for his defence. The delinquent who was the original petitioner has challenged that part of the order by which the matter was remanded to the Disciplinary Authority in Letters Patent Appeal No. 349 of 1991, while in the other appeal the authorities have challenged the part of the order that sets aside the order of dismissal.

2. The original petitioner - employee was serving as an Armed Constable in SRP Group No.9, Vadodara when he was given the charge-sheet as per Annexure "A" to the petition, alleging that on 15th Feb. 1979 he had given filthy abuses to his superior, Battalion Quartermaster Shri Marathe, when he was refused leave and was directed to go to Gandhinagar and further that the said employee had assaulted Police Constable Gulabsinh, who was attached as an Orderly to Shri Marathe, on the same day at noon. On the basis of the enquiry report, a show cause notice came to be issued on 28.6.1982 against the petitioner proposing the punishment of dismissal and the Disciplinary Authority by order dated 29th Sept. 1982 dismissed him from service. That order was challenged in appeal, which came to be dismissed by the Special Inspector General of Police, Armed Unit, Ahmedabad on 3.3.1983. Further appeal to the Director General of Police also came to be dismissed on 8.2.1984. Thereafter, the Revision Application before the State Government came to be rejected on Nov.7, 1984.

3. Before the learned Single Judge, the learned Counsel appearing for the original petitioner did not challenge the findings of the enquiry officer as noted in the order but assailed the order of dismissal on the ground that it was not a speaking order. The stand taken on behalf of the petitioner was that his explanation was not considered at all though a detailed reply running in as many as 70 pages was given and none of the contentions was considered by the Disciplinary Authority. It was also his contention that the Disciplinary Authority did not apply his mind to the aspect of the quantum of

punishment and reliance was placed on the decision of this Court in Mohanbhai Dungarbhai Parmar Vs. Y.B. Zala and anr., reported in 20 GLR 497.

4. On behalf of the State it was contended that the High Court ought not to interfere in such matters under Art. 226 of the Constitution.

5. The learned Single Judge held that the Disciplinary Authority had not taken into account the vital and important aspects of procedure and substance canvassed by the learned Counsel appearing for the petitioner and that it had not applied its mind to the quantum of punishment. It was submitted on behalf of the petitioner before the learned Single Judge during the course of the judgement that the impugned order of dismissal should be set aside and the matter be remanded to the Disciplinary Authority for fresh consideration and in the meanwhile the petitioner be reinstated in service with full backwages. On this aspect the learned Single Judge found that the petitioner had suppressed the fact of his employment in a detective agency for the period from 1987 to 1989 and had wrongly stated on oath that he was not gainfully engaged. It was held that in view of the later admission of the original petitioner that during the period from 1987 to 1989 he was gainfully employed, he was not entitled to get reinstatement with full back wages and it was open for the authority to treat "all this period of proceedings as leave" if the petitioner was entitled to such leave.

6. It appears to us that the learned Single Judge was impressed by the fact that the Disciplinary Authority had not applied its mind to the vital aspect of the quantum of punishment. The learned Single Judge observed that the Disciplinary Authority could impose severe punishment as of dismissal from service only when it came to the conclusion that the misconduct committed by the delinquent was serious and that it was not safe to retain the delinquent in service. It observed that it appeared that the authority had not taken into account these vital and important aspects. In our opinion the learned Single Judge has given cogent reasons for setting aside the order of dismissal and remanding the matter to the Disciplinary Authority for a fresh consideration in light of the observations made in the judgement. It does appear that the Disciplinary Authority did not direct itself to the quantum of punishment which it was bound to do. We therefore do not find any valid ground for interfering with the impugned decision of the learned Single Judge and both the appeals are therefore

dismissed.

7. The learned Counsel appearing for the petitioner has stated that the petitioner at this distant point of time is prepared to put in voluntary retirement foregoing his backwages and this he will do within four weeks from today. If any such application for voluntary retirement is submitted by the original petitioner to the concerned authority, it is directed that the concerned authority shall duly consider the same and take its own decision in accordance with law within four weeks of the receipt of such application.

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\*/Mohandas